IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

RP.No. 375 of 2007(I)

AGAINST THE JUDGEMENT/ORDER IN WPC.8700/2007 Dated 15/03/2007
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REVIEW PETITIONER/PETITIONER IN THE SPL.LEAVE PET.

ALEYAMMA THOMAS, W/O.THOMAS THOMAS,
PULIMOOTTILAYA MOOLEPPARAMBIL HOUSE, CHALAKKUZHY,
AZHIYIDATHUCHIRA, THIRUVALLA (MEMBER, WARD NO.V,
PERINGARA GRAMA PANCHAYAT, PERINGARA).

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENTS: PETITIONER & RESPONDENTS IN THE WRIT PETITION:
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1. **SATHEESH CHATHENKERRY, AGED 33,**
   S/O.RADHAKRISHNA PILLAI, (VICE PRESIDENT,
   PERINGARA GRAMA PANCHAYAT), REVEENDRA VILAS,
   CHATHENKERRI P.O., PERINGARA, THIRUVALLA TALUK,
   PATHANAMTHITTA DISTRICT.

2. **THE BLOCK DEVELOPMENT OFFICER,**
   OFFICE OF THE BLOCK DEVELOPMENT OFFICER,
   PULIKEEZHU BLOCK, PATHANAMTHITTA DISTRICT.

3. **THE STATE ELECTION COMMISSION**
   REPRESENTED BY ITS PRINCIPAL SECRETARY,
   THIRUVANANTHAPURAM.

4. **STATE OF KERALA REPRESENTED BY**
   PRINCIPAL SECRETARY, (LOCAL ADMINISTRATION),
   TRIVANDRUM.

5. **PERINGARA GRAMA PANCHAYAT,**
   PATHANAMTHITTA REPRESENTED BY ITS SECRETARY,
   PERINGARA P.O.

6. JOHN ABRAHAM, MEMBER,
PERINGARA GRAMA PANCHAYAT, MUNDAKATHIL PARAMABU,
CHATHENKERY P.O., PATHANAMTHITTA DISTRICT.

7. PRAMOD ELAMON, MEMBER,
PERINGARA GRAMA PANCHAYAT, MUNDAKATHIL PARAMBU,
CHATHENKERRY P.O., PATHANAMTHITTA DISTRICT.

BY ADV. SRI.JOSEPH GEORGE
GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA
SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 24/07/2007, ALONG WITH WPC NO. 10384 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

RP. No. 375 OF 2007 IN WP(C) No. 8700 of 2007 &
WP(C) No. 10384 OF 2007

Dated this the 24th day of July, 2007

O R D E R

A member from Peringara Grama Panchayat representing its ward No. 5 seeks to review the judgment which I had passed in WP(C) No. 8700 of 2007, i.e., Annexure-I judgment. The review petitioner was not a party to writ petition No. 8700 of 2007 which was disposed of by this court by passing Annexure-I judgment at the admission stage itself after hearing counsel for the petitioner, the Government Pleader and the Standing Counsel for the Election Commission. Ext.P1 notice was issued by the first respondent authorized officer regarding a meeting for consideration of no confidence motions which were proposed against the President of the Panchayat and also against the Vice President of the Panchayat. It was stated in Ext.P1 that the motion of no confidence against the President will be taken up at 11 p.m. on 19-3-2007. But as regard the no confidence motion against the Vice President who was the petitioner in the writ petition, it was stated that the same will be taken up after proceedings are completed on

the no confidence motion regarding the President. In the writ petition the Election Commissioner had filed a statement wherein it had been conceded that Ext.P1 composite notice issued by its authorized officer was unsustainable in law and that it was issued on account of inept handling of the issue by the authorized officer. It was also stated that section 157 of the Kerala Panchayat Raj Act, 1994 deals with the motion of no confidence and that there are separate rules prescribed therein. Accepting the statement I passed annexure-I and quashed Ext.P1 to the extent it pertains to the consideration of no confidence motion against the Vice President of the Grama Panchayat. Apart from quashing Ext.P1 I also recorded the statement of the Election Commission that instructions were already issued by the Election Commission to its authorised officer to issue fresh notice to the members of the Panchayat for convening a meeting for consideration of motion of no confidence against the Vice President based on the notice of the intention to move the motion already received by the authorized officer on 7-3-2007, as if the authorized officer has received the notice of intention to move the motion only on the

date on which he received instructions from the Election Commission in that regard. In this review petition what the petitioner challenges is the direction to the first respondent "to abide by all the instructions which are being issued to him by the Election Commission in the matter of convening of meeting for considering no confidence motion against the the petitioner".

2. In WP(C) 10384/07 the petitioner challenges Ext.P3 communication issued by the State Election Commission to the first respondent therein, the authorized officer directing him to issue fresh notice to the elected members of the Panchayat based on the notice of intention to move the motion already received by him on 7-3-2007, as if he had received the said notice of intention to move the motion on the date on which he received Ext.P3 from the Commission. The petitioner also challenges Ext.P4 notice thereafter issued by the first respondent proposing to convene a meeting of the elected members of the Grama Panchayat on 28-3-2007 at 11 a.m. in the Conference Hall of the Grama Panchayat for considering a no confidence motion against the 7th respondent Vice President.

Extensive arguments were addressed before me by the learned counsel for the parties, viz. Sri.S.Subhash Chand, counsel for the petitioner in the RP as well as in the writ petition, Sri.Murali Purushothaman, learned counsel for the Election Commission as well as Sri. Joseph George, counsel for the 7th respondent in the writ petition.

3. It was argued by Sri.Subhash Chand, I will notice with considerable force that the second respondent Election Commission has no authority in law to issue a direction to the authorized officer in violation of the provisions contained in Section 157 which is a comprehensive code relating to motion of no confidence. It was submitted that as per section 157 the date of receipt of notice of intention to move the no confidence motion is the relevant date for fixing the date of convening of the meeting of elected member of the Grama Panchayat for considering the no confidence motion. The said meeting has to be convened statutorily within 15 days and not later than 15 working days from the date on which the notice was delivered. Statutory provisions do not give any power of relaxation in this regard. The direction in so far as the authorized officer is

concerned is to imagine that the notice of intention to move the motion of no confidence was received by him not on the date of its receipt but on the date on which he had received Ext.P3. The second respondent lacks authority in law to issue such direction to respondent No. 1 which is perse contrary to section 157 of the Panchayat Raj Act. Sri.Subhash Chand cited several authorities also in support of his arguments such as E.P.Kamaruddin v. State Election Commission & others, 2006 (3)KLJ 542; Retnamma v. State Election Commission, 2000(2) KLT 584; my own judgment in WP(C) No. 2086 of 2007; Anitha v. Kanjirappilly Block Panchayat, 2004(3) KLT 211, Sri. Murali Purushothaman, standing counsel for the Election Commission also did not lag behind in citing precedents. He placed strong reliance on judgment of a Division Bench of this Court in Jacob Abraham v. State of Kerala, 1999(1) KLT 225 and would point that in that case the authorized officer of the Election Commission was directed to proceed afresh with the no confidence motion received by him along with notice of intention and that he was specifically directed to proceed as if he has received the notice of motion on the date of the

judgment. According to the learned counsel it was more or less in the lines of those directions that I had directed the first respondent to abide by all directions which may be issued by the Election Commission to him in the matter of convening of no confidence motion.

4. As already indicated by me the submission of Sri.Subhash Chand that the direction in Ext.P3 in the writ petition to the authorized officer to proceed as if he had received notice of intention on the date of Ext.P3 was beyond his statutory competence was was forceful and had the support of judicial authority. Jacob Abraham's case was one where this court in exercise of extraordinary jurisdiction under Article 226 passed similar direction on considerations of justice in the facts and circumstances of that case. As far as the present case is concerned I do not think that the facts are comparable to those which obtained in Jacob Abraham's case where the meeting to discuss the no confidence motion was obstructed by deliberate action of certain groups.

3. However I do not think that there is necessity to allow either the RP or the writ petition. I had declined interim relief

in this writ petition and I had permitted the meeting pursuant to Ext.P4 to go on observing that the result of that meeting will be subject to the outcome of the writ petition. I am told that anticipating the result the 7th respondent resigned as Vice President. Under these circumstances in my opinion the RP and the writ petition have become infructuous. RP and the WP(C) will ' stand dismissed noticing the subsequent event of the 7th respondent resigning as Vice President.

RP and the writ petition will stand dismissed.

(PIUS C.KURIAKOSE, JUDGE)

ksv/15208.